IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1971 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMANDING OFFICER

Versus

P.V.G. NAIR

Appearance:

Ms. S.N.Pahwa for MR PM THAKKAR for Petitioner

MR MB BUCH for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/02/98

ORAL JUDGEMENT

The petitioner before this Court is the Commanding Officer, Air Force Station, Jamnagar, the

employer. This petition is directed against the judgment and award dated 31st July, 1991 passed in Reference (IT) No. 27 of 1988 by the Central Industrial Tribunal, Ahmedabad.

2. Respondent herein, the workman, was at the relevant time, serving in a canteen run and managed by some officers of the Air Force. It appears that in the month of November, 1975, certain irregularities were detected in the disposal of the stock of liquor in the said canteen pursuant to which, the workman tendered resignation on 24th November, 1975 (Annexure "E" to the petition). Under the said resignation, the workman has accepted his guilt and has tendered the same to save his reputation and to avoid any stigma. Further, the workman prayed that the resignation be accepted with immediate effect and the requirement of three months' prior notice be waived. It appears that there is no formal order made accepting the said resignation. However, same become effective immediately. The workman thereafther some time on 15th December, 1975, complained that the said resignation was exacted from him under coercion and pressure. It is not brought on the record whether the said complaint was received by the competent authority or whether the same was investigated. The workman, thereafter, instituted a suit being Regular Civil Suit No. 629 of 1977 before the learned Civil Judge, (S.D.), Jamnagar. Said suit was contested by the defendants and preliminary objection in respect of the jurisdiction of the civil court to try the said suit was raised. The Court, after hearing the parties, came to the conclusion that the canteen was an industry and the plaintiff was a workman and, therefore, the industrial tribunal should have jurisdiction to entertain the dispute and the civil court had no jurisdiction to entertain the said dispute. The plaint was, therefore, returned to the workman on 31st July, 1984. The workman, thereafter, some time in June, 1985, approached the Assistant Commissioner of Labour. The Assistant Commissioner of Labour was of the view that the Air Force was not an industry and the Industrial Dispute Act, 1947 (hereinafter referred to as "the Act") would not apply. He, therefore, rejected the application made by the workman. Feeling aggrieved, the workman preferred a writ petition being Special Civil Application No. 1544 of 1986 before this Court. The Court under its order dated 26th June, 1987, held that it was essentially an industrial dispute and that the dispute was required to be referred to the Tribunal. Thus, above referred reference was made to the Tribunal. After trying the dispute referred to the Tribunal, the

tribunal held that the canteen was an industry and that the respondent was a workman as defined in section 2(s) of the Act. The Tribunal further held that the resignation was exacted from the workman under coercion and pressure and the same was not effective. The Tribunal, therefore, proceeded further to direct the reinstatement of the workman as the Manager of the canteen and to pay him full backwages

3. Feeling aggrieved, the employer has preferred this petition. Petition was admitted to final hearing under order dated 7th May, 1992 and interim relief was granted in terms of paragraph 8(B) of the petition subject to section 17B of the Act. The employer was directed to pay a sum of Rs.25,000/- to the workman. It was further directed that in the event the employer lost in this petition, it shall have to pay the entire amount of back wages with 15% interest calculated from the date of the award i.e. 31st July,1991. At the time of hearing, Mr. Buch, the learned advocate appearing for the workman has informed that pending this petition, the workman has reached the age of superannuation and the question of his reinstatement in service, therefore, does not survive.

4. Ms. Pahwa, the learned advocate has appeared for the employer and has submitted that the functions of the Air Force are essentially sovereign in nature and the Air Force, therefore, cannot be said to be an industry. If the Air Force is not an industry, the canteen run by it also cannot be said to be an industry and the provisions contained in the Act would, therefore, be not attracted nor would the Tribunal have the jurisdiction to entertain the dispute referred to it. She has further submitted that in any case, the workman was performing the duties of the Manager and, therefore, cannot be said to be a workman within the meaning of section 2(s) of the Act and therefore also, the Tribunal would not have jurisdiction to entertain and resolve the dispute referred to it.

5. Mr. Buch has submitted that the canteen is not run or managed by the Air Force; it is not funded by the Government; the employees are not appointed by the Government; the activities of the canteen are not such which can be said to be the sovereign function of the Government and the canteen is, therefore, essentially an industry within the meaning of section 2(j) of the Act. He has further submitted that the canteen is run and

managed by the association of persons who happen to be the Air Force Officers. Said canteen is run for the benefits of the very Air Force Officers. He has further submitted that the workman was appointed as a clerk in the said canteen for consolidated pay of Rs.550/- p.m. He has denied that the workman was either serving as manager or performing any supervisory duties. He has, therefore, submitted that the workman was essentially a workman within the meaning of sec. 2(s) of the Act.

6. He has also relied upon the judgment of the Bombay High Court in the matter of Indian Navy Sailors' Home versus Bombay Gymkhana Club Employees' Union and another [1986 (II) LLJ 154]. Under the said judgment, the Bombay High Court has held that the Indian Navy Sailors' Home which provides facilities and amenities to the Naval Officers and of which the Flag Officer Commanding in Chief, Western Naval Command is the Patron is an industry within the meaning of section 2(j) of the Act.

7. It is apparent that the canteen has been established by the officers of the Air Force to serve themselves and is being funded by the contributions made by such officers. The workman was appointed by the said canteen and was paid the salary by the canteen. It is not disputed that neither the workman was appointed by the Government or the Air Force nor was he paid the salary by either of the said authorities. Further, the employer itself had raised preliminary objection before the Civil Court that the plaintiff i.e. the workman was not the defence servant and the dispute was necessarily an industrial dispute. Further, even this Court under its order made on Special Civil Application NO. 1544 of 1986, has held that the dispute was necessarily an industrial dispute and was required to be referred to the industrial tribunal. The employer, therefore, now at this stage, cannot be permitted to reprobate and contend that the canteen was not an industry and that the workman was not the workman within the meaning of section 2(s) of the Act. Further, having regard to the definition of the word "industry" as contained in section 2(j) of the Act, it cannot be gainsaid that the canteen is an industry within the meaning of the said Act. Besides, it has been brought on record that the workman was serving as a clerk and was merely assigned certain duties of a manager. He, therefore, cannot be said to have been employed mainly in a managerial or administrative capacity which would exclude him from the definition of the word "workman" as defined under the Act. The employer has failed to produce any evidence to establish that at the relevant

time, the workman was employed as Manager or that he was performing the duties of a manager. time. The employer has also failed to establish that the workman was employed in any supervisory capacity. In my view, therefore, Ms. Pahwa is not right in contending that the workman was employed mainly in managerial or administrative capacity or in supervisory capacity. The workman, therefore, cannot be excluded from the definition of the word "workman" under section 2(s) of the Act.

8. The question that arises is whether the resignation tendered by the workman was of his own volition or was exacted from him as complained by him. The workman has deposed before the tribunal and has stated on oath that he was made to sign the letter of resignation in presence of five officers (two of whom are named by him) under coercion and pressure. The employer has not examined either of the said five Officers and has not been able to contradict the statement made by the workman. Ms. Pahwa fairly concedes that neither of the five officers has been examined in defence. She also concedes that there is no other material which would contradict the statement made by the workman. In the circumstances, the finding recorded by the Tribunal is required to be confirmed. If the workman is compelled to tender the resignation in the manner in which it is done in the instant case, the direction issued by the tribunal ordering reinstatement of the workman and payment of full back wages would not call for interference.

9. Ms. Pahwa has submitted that in any view of the matter, the workman did not raise any dispute in respect of his complaint for several years and he instituted the suit nearly two years after the date of resignation and that too before wrong forum. He approached the Assistant Labour Commissioner in the month of June, 1985. The backwages therefore, cannot be ordered to be paid from the date of the resignation but it should be from the date he made an application for reference to the Assistant Commissioner of Labour under the Act. Mr. Buch has contested this proposition and has submitted that in the suit, the employer itself raised the preliminary objection of jurisdiction which was upheld by the Civil Court and the workman should not be made to suffer for it. He has submitted that the workman was never indolent and he has raised the dispute within reasonable time. He, therefore, cannot be denied the wackwages from the date of the resignation. I believe

Mr. Buch is right. The workman cannot be said to have raised the dispute after undue delay which should deprive him of the backwages to which he is otherwise entitled. Ms. Pahwa has further contended that the learned Tribunal has recorded the finding that the workman was serving as a Clerk nonetheless the workman is ordered to be reinstated as a Manager. She has submitted that the Tribunal has committed an error. If on the date of the resignation, he were serving as a clerk, the workman could not have been ordered to be reinstated as a Manager. Mr. Buch fairly concedes that the workman be treated as a clerk all along.

10. In view of the above discussion, petition is dismissed. It is, however, clarified that the workman will be deemed to have been reinstated in service as a clerk and would be entitled to the backwages on that basis. As it is discussed hereinabove, the workman was never a defence servant nor was he public servant, he was appointed by the Canteen which is run and managed by the officers of the Air Force and is funded by the contributions made by such officers. It must, therefore, be clarified that the backwages which the workman is entitled shall be paid by the canteen and the workman shall have no claim for backwages either against the Government or the Air Force. Further, in view of the interim order made by this Court, a sum of Rs. 25,000/has been paid to the workman. Said amount of Rs. 25,000/- and any amount that may have been paid to the workman pending this petition under section 17B of the Act shall be deducted from the amount of backwages due and payable to the workman. The workman shall also be entitled to the interest calculated at the rate of 15 percent per annum from the date of the award i.e. from 31st July, 1991 till the date of payment. Subject to the above directions, petition is dismissed. Rule is discharged. Interim order made earlier stands vacated. There shall be no order as to costs.

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Vyas